

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS**

December 2, 1999

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, December 2, 1999, at 2:00 P.M. in the Meeting Room of the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. William Rider, Chairman; William Barr, Vice Chairman; Mrs. Peg Mailler, Mr Eugene Lofdahl, Dr. James Branscome and Mr. John Meadows. Also present were Mrs. Carolyn G. Bowen, Zoning Administrator; Mr. Kevin Burke, Deputy County Attorney; Mr. Don Margraf, Assistant Zoning Administrator, and Mrs. Beverly Pullen, Zoning Office Technician. Ms. Barbara Wilson was absent.

MINUTES

It was moved to approve the minutes of the November 4, 1999 hearing as submitted.

LETTERS OF NOTIFICATIONS

PUBLIC NOTICE Mrs. Bowen stated that to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

VARIANCE #44692

ANTHONY EDWARD BALOGH (OWNER)

Owner is requesting a variance to the side yard to allow the construction of an addition. The addition would be located 21 feet from a side yard, wherein the Zoning Ordinance requires 25 feet. The subject property is located at 4317 South Starcrest Drive, and is identified as PIN #7915-41-7855-000, containing 1.14 acres, is zoned Residential-1 (R-1), in Cedar Run District.

Mr. Margraf stated that this request had been continued from last month's meeting at the request of the owner. He stated that the BZA had gone to the site prior to last month's meeting, where Mr. Balogh had marked the location of the drainfield, reserve area, and septic tank on his property.

Mr. Rider asked if the applicant was represented here today.

No one spoke.

Mrs. Bowen asked Mr. Rider if he would like to carry the item over to the end of the agenda, in case the applicant was running late.

Mr. Rider stated that this request would be carried over until the last order of business today.

SPECIAL PERMIT #44905**REID S. AND STEPHANIE M. ALTAVILLA (OWNERS)**

Applicants are requesting special permit approval for a preschool/day care center/nursery school, and requested an identification sign of 4.5 square feet, on property identified as PIN #7916-14-2562-000, containing 1.23 acres, located at 4513 Lee Hwy. (State Route 15 & 29), near New Baltimore, is zoned R-1 (Residential), in Scott District.

Mr. Margraf reviewed the staff report stating that the request was continued from the November hearing to allow additional time to consider the safety of the children, revised parking area on site, improvements required by VDOT, etc. He stated that a revised site plan had been submitted, indicating the extension of the right turn lane. He indicated that additional comments had been received from Virginia Department of Transportation and are attached to the staff report.

Mr. and Mrs. Altavilla were present in support of their request. Mr. Jim Carson of Carson, Harris & Associates was also present to represent the Altavillas. Mr. Carson spoke regarding the request. He stated that at last month's meeting several issues were discussed regarding the impact of the parking in front of the building and regarding existing trees. He stated that the site plan had been revised to move the parking area and save the large tree. He indicated that the applicants have included in their contract with the parents, a condition regarding the exit procedures of the property, and that a copy of that agreement has been submitted to the BZA. He also stated that the applicants have hired Soils Consultant Inc. regarding the well and septic concerns.

Mr. Rider stated that the contract between the parents and the caregivers, specifically the routing of traffic, was not very clear.

Mr. Carson concurred with Mr. Rider and stated he felt the language could be re-worded for clarity.

Mr. Rider asked about the parking and drop off area, specifically the driveway entrance width of 18 feet.

Mr. Carson stated that the width of the driveway would allow the passing of two vehicles at one time.

Mr. Rider stated that he had spoken with the Resident Engineer regarding the traffic light at Route 676, and Mr. Moore had indicated concerns and that close monitoring of the traffic would be likely.

Mr. Charles Jackson, of Soils Consultants, Inc. spoke regarding the well and septic concerns. He stated that an area has been identified for a 600 gpd to allow for 60 occupants, however since the time that the minimum requirements for this use is now 1200 gpd and the Health Dept. concurs that a second line will be required for this increase. He indicated that the existing well on the site

meets the requirements for this use. He stated that there have been concerns with water usage, and that a water meter will be required for monitoring. He suggested that the number of students start at 50 to 51, until the exact usage can be determined.

No one else appeared to speak to the request.

On the motion made by Mr. Lofdahl, and seconded by Mr. Meadows, it was moved to grant special permit #44905, after due notice and hearing, as required by Code of Virginia §15.2-2204 and Section 5-009 of the Fauquier County Code, based upon the Board's findings:

1. The proposed use will not adversely effect the use or development of neighboring properties.
2. It is in accordance with the applicable zoning district regulations and to applicable provisions of the adopted Comprehensive Plan, and does conform to the general standards set forth in Section 5-006(1) through (9) of the Zoning Ordinance of Fauquier County, which sections are incorporated in this Motion as if fully set forth.
3. The use will be compatible with the neighborhood in which it is to be located.
4. The application does comply with the specific standards which apply to the use in question, namely:

5-503 Additional Standards for Pre-School/Day Care Center/Nursery School

1. In addition to complying with the minimum lot size requirements of the zoning district in which located, the minimum lot area shall be of such size that 100 square feet of usable outdoor recreation area shall be provided for each child that may use the space at any one time. Such area shall be delineated on a plat submitted at the time the application is filed.

For the purpose of this provision, usable outdoor recreation area shall be limited to:

- A. That area not covered by buildings or required off-street parking spaces.
 - B. That area outside the limits of the required front yard.
 - C. Only that area which is developable for active outdoor recreation purposes.
2. All outdoor recreation area shall be fully fenced.
5. The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses as are deemed necessary in the public interest

to secure compliance with the provisions of this Ordinance: (Conditions including, but not limited to, those recited in Section 5-007 A-L of the Zoning Ordinance:

- (a) Clients leaving the site, wishing to travel south on Lee Highway, shall make a an immediate right turn on Riley Road and continue back to Route 15 & 29. This condition shall be stated in the Maplewood Childcare Center Contract.
- (b) The existing right turn lane shall be extended from the Showcase Nursery to the existing entrance of the subject property, as required by Virginia Department of Transportation.
- © The area of the identification sign shall be no larger than 4.5 square feet, with colors of light peach and rust, and be located no closer than four (4) feet from the front property line.
- (d) Site plan as required.

The motion carried unanimously.

VARIANCE #44901

ELAINE M. KELLER (OWNER/APPLICANT)

Applicant is requesting a variance to a side yard requirement for an existing barn and a proposed addition to the barn. The existing barn is located 87.4 feet from the side yard, and the proposed addition would be located 88 feet from the side yard, wherein the Zoning Ordinance requires a setback of 100 feet. The subject property is located at 10004 Wesley Chapel Road (State Route 798), Marshall District, is identified as PIN #6944-95-3845-000, contains 5.3 acres, and is zoned RA (Rural Agriculture).

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier. He further stated that zoning permit #18302 was issued on November 4, 1982 to the previous owners, and that the barn was constructed 87.4' feet from the property line and should have been constructed 100' feet from the property line. He stated that the property does have a narrow shape and does vary in elevation. He further stated that VDOT does not have any objections to this request.

Ms. Sharon Burke, agent for the owner appeared at the hearing. She presented color copies showing the elevations of the property and how the elevations limited the use of the five acres. She stated that she felt the previous owners had made an error in measurement, and that the location of the barn would not adversely impact the adjoining properties.

She stated that she understood, but she felt that history would show that there are other properties with similar problems and she does not feel that this request is unreasonable.

Mrs. Bowen stated that the barn in it's present location is a zoning violation. She further stated that the existing structure could be used, but for storage only, and not as a barn, unless a variance is granted.

Ms. Burke stated that on some of the steep slopes it would be difficult for a barn to function on these slopes.

Mr. Lofdahl asked the use of the structure.

Ms. Burke stated that the barn would be used for horses.

Mr. Rider asked if anyone wished to speak regarding this request.

No one appeared.

On the motion made by Mr. Barr, and seconded by Mr. Lofdahl it was moved to grant variance #44901, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the topography of the property.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of: (*select a, b or c*):
 - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance;
 - (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
 - (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;
5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are
6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
7. The strict application of the Ordinance will produce undue hardship.
8. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
9. The minimum variance that is necessary to afford relief is 12.6 feet for the existing barn, and 12 feet for the proposed addition to the existing barn.

The motion carried unanimously.

APPEAL #44910**ROBERT FREDERICK DORKEY (OWNER/APPLICANT)**

Owner has filed an appeal to certain determinations made by the Zoning Administrator in a letter dated September 14, 1999 related to SE #98-L-12 granting Virginia Power the authority to construct and operate a peak generation facility on PIN #6888-83-3857-000, PIN #6898-10-8862-000, and PIN #6898-10-1550-000, which is located adjacent to property owned by Robert Frederick Dorkey, identified as PIN #6898-51-3857-000, containing 87 acres, located at 12034 Morgansburg Road (State Route 653), in Lee District.

Mrs. Bowen reviewed the appeal and stated that she had prepared an Affidavit and submitted, with backup material and asked that it be made part of the record. She stated that on 9/14/99 a letter was sent to Mr. Dorkey, addressing two conditions of the special exception and the general standards. She further stated that a letter had been received from John McGranahan, attorney for Virginia Power, and was included in the materials. She asked that the BZA leave the file open for both parties to submit additional information.

Mr. Meadows stated that he felt it necessary to disclose his association with Virginia Power and felt it necessary to disqualify himself from this case. Mr. Meadows left the BZA.

Mr. Rider stated that due to the volume of the material submitted, he felt it would be necessary to carry over the appeal until next month's meeting.

Mr. Lofdahl stated he had reviewed the material and did not feel the information filed with the appeal had anything to do with the appeal.

Mr. Rider stated that he did not feel that the BZA is in a position to discuss legal issues with the County Attorney, until the material is reviewed.

Mr. Lofdahl stated that he felt it necessary at some time to discuss in a Closed Meeting.

Mr. Rick Dorkey was present in support of this appeal. He stated he has asked Mr. Christopher Miller from Piedmont Environmental Council to speak regarding this appeal, and as an expert advisor and would like the opportunity to allow Mr. Miller to speak regarding this appeal. He stated that he felt the general standards had not been met. He stated that the Health Department had determined that this project has impacted his property. He stated that his quiet enjoyment had been violated, due to noise, construction and the activity generated on the property.

Mr. Rider stated to Mr. Dorkey that the information should be kept appurtenant to the appeal. He further stated that it was his understanding that the initial draw down was not affected.

Mr. Dorkey stated that in a meeting with Mr. Carr, Mr. Carr stated his well had been adversely impacted.

Mr. Lofdahl asked for Mr. Dorkey for clarification of adverse impact.

Mr. Dorkey stated that he had attended most of the hearings.

Mrs. Bowen stated that she did not believe that the water drawdown issue was before the BZA today.

Mr. Burke stated Conditions # 11 & 12 deal with water monitoring at the time the facility first becomes operational. He stated that it is Mrs. Bowen's determination that the facility is not yet operational and therefore the conditions cannot be triggered at this point.

Mr. Dorkey stated that it only pertains to wells that exist at this time, and not future wells.

Mr. Rider stated that all comments will be limited to those of the appeal issue.

Mr. Miller stated that due to Mrs. Bowen's suggestion that this is not an issue which she can make a determination, and if the general standards are being violated, then they have no right of appeal. He further stated that before more time passes, Mrs. Bowen needs to make a determination of whether these standards are being violated. This is a RA zoned area, the county is doing spot zoning, and not taking the responsibility for any of the impacts to adjoining property owners, and is inconsistent with what is planned and zoned for this area. He stated that what the landowner is asking of Mrs. Bowen is that she make a determination of whether a violation has occurred of the general standards.

Mr. Lofdahl stated that it is not before the Board to determine the impact, but it is the legal situation that the BZA has to resolve.

Mr. Miller stated that he felt there is evidence to support that there are adverse impacts, and that Mrs. Bowen has an obligation to enforce whether the standards are being violated continuously.

Mr. Lofdahl stated that he felt the BZA needed to seek advice from Counsel regarding this appeal.

Mr. Barr asked Mr. Miller why he felt Mrs. Bowen has the authority to make such determination, in that the Board of Supervisors was the approving authority for special exceptions.

Mr. Miller stated that the situation is if there is a violation of the special exception, or of the general standards, then adjacent landowners do not have a remedy from the Zoning Administrator for a ruling whether a violation has occurred and puts the BOS in a position of being a judge. He stated that when the Board of Supervisors grant a special exception, they do so with the understanding that the Zoning Administrator has to enforce the compliance with the general standards, as well as conditions of that permit.

Mr. Rider stated that he did not agree, due to the fact that the Board of Supervisors adopted the Zoning Ordinance in the first place, therefore Mrs. Bowen does not have the authority to override the BOS.

Mr. Miller stated that he does not think the Zoning Administrator has the authority to override the BOS, but to enforce the conditions once approved.

Mr. Lofdahl asked Mr. Miller for clarification of his response.

Mr. Miller indicated that Mrs. Bowen stated that she would not review the record. He stated that there are adverse impacts to adjoining property owners.

Mr. Miller summarized that the appellant, as well as other adjoining property owners have experienced significant impact to their property, such as declining property values, loss of ability to farm, and impact on the wells.

Mr. Rider asked if there was further comment from the appellant.

Mr. John McGranahan, Attorney for Virginia Power, spoke regarding the appeal. He stated that he agreed with the Zoning Administrator. He stated that he felt the BOS made the determination of whether the use had met the general standards, and there was a thirty-day appeal period, but no appeal to the BOS' decision was filed. He further stated that the conditions of the special exception are enforceable by the Zoning Administrator, but not prior to the operation of the plant. Virginia Power is complying with the conditions of the special exception and that he felt the general standards are beyond the appeal.

Mr. Rider asked for a motion to defer action on this appeal until next month.

On the motion made by Mrs. Mailler, and seconded by Mr. Barr it was moved to defer action for 30 days.

The motion carried unanimously.

Mr. Meadows asked permission to rejoin the Board.

Mr. Rider granted such request.

VARIANCE #44936

ARCHIE H. LIGHTFOOT, JR. AND REBECCA S. LIGHTFOOT (OWNERS/APPLICANTS)

Applicants are requesting a variance to the front yard requirements to allow the construction of an addition to an existing garage. The proposed addition would be located 32.5 feet from the centerline of Fourth Street (unbuilt), wherein the Zoning Ordinance requires 50 feet. The subject property is located at 12019 Center Street (State Route 1204), in Lee District, identified as PIN #6888-00-5845-000, contains .281 acres, and is zoned Residential-2.

Mr. Margraf reviewed the staff report and stated on February 6, 1992, the BZA granted a variance for the existing garage and the minutes are attached as Attachment A to the Staff report.

He stated that the applicants are requesting an addition to this existing garage. Virginia Department of Transportation does not have any objection to this request.

Mr. Archie Lightfoot, owner was present on behalf of his request. He explained that his plans were to build a room on the back of the house, and then decided that he would like to add onto the garage for storage of tools.

Mr. Rider asked if the previous variance was on the same property.

Mr. Margraf stated that it was.

Mrs. Bowen stated that the previous variance was granted to allow the construction of the garage as shown on the plat.

Mr. Rider asked who would build the road now, if it had not been since the 1890's and stated that he did not feel the granting of this variance would impact the neighbors.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

On the motion made by John Meadows, and seconded by Mr. Barr, it was moved to grant variance #44936, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because the street has not been built for over a 100 years and would not affect anyone.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.
5. The strict application of the Ordinance will produce undue hardship.
6. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
7. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
8. The minimum variance that is necessary to afford relief is 17.5 feet from centerline of Fourth Street.

The motion carried unanimously.

SPECIAL PERMIT #44960**VINT HILL ECONOMIC DEVELOPMENT AUTHORITY (OWNER/APPLICANT)**

Applicant is requesting special permit approval for the location of a golf course/public and an identification sign of 32 square feet, on approximately 171 acres. The property is identified as PIN #7915-86-0060-000 and PIN #7915-75-9953-000, located on Kennedy Road (State Route 652), Vint Hill Road (State Route 215) and Rogues Road (State Route 602), zoned RA (Rural Agriculture), in Cedar Run District.

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier. He stated that the U.S. Army had formerly owned the property, and a rezoning has been submitted to the Board of Supervisors to rezone the property from Rural Agriculture to Planned Residential District and Planned Commercial Industrial District. He stated that the applicant has submitted a proposed site plan, a Management Plan, as well as an Integrated Pest Management Plan, and these documents are attached to the Staff Report. He further stated that staff has received comments from the County Engineer, Water and Sanitation Authority, but are still awaiting comments from Virginia Department of Transportation, Virginia Department of Health, Emergency Services and Fauquier County Health Department.

Mr. Rider asked about the proposed rezoning plan and if the rezoning request is approved, will a special exception be required.

Mrs. Bowen explained that if the property is rezoned in December by the Board of Supervisors, then the special permit request will no longer be valid, and the applicants will need to apply for special exception approval from the Board of Supervisors for a golf course facility.

Mr. Meadows asked to be excused from this request, due to his association with Vint Hill on this case. Mr. Meadows left the BZA.

Mrs. Bowen stated that there still is quite a bit of information needed for a fair evaluation of this special permit request.

Mr. Owen Bludau, Executive Director for Vint Hill Economic Development Authority, was present on behalf of this request. He stated that they are the applicants, however they do have a contract to lease the golf course to Miller and Smith. He explained that previous golf course plans have been re-done several times, and have been delayed for several months, due to the rezoning plans, lease to FAA, etc. He explained that some of the plans for the golf course are contingent on the approved plan for other items. He explained that since Miller & Smith will be the lease agent, he would like for Mr. John Conrad, representative of Miller & Smith, to speak regarding the application.

Mr. Rider explained that due to Mrs. Bowen's request for more information, he did not feel a decision could be made at this time.

Mr. Lofdahl asked if the current request includes the clubhouse, maintenance facility, and greens, etc.

Mr. Bludau stated that the request does include the clubhouse and maintenance facility.

Dr. Branscome asked for the number of employees.

Mr. Bludau stated that he would have to defer that question to the developer of the golf course.

Mr. Conrad spoke regarding this request. He stated that Miller & Smith will be the master developer of the entire site and not the golf course developer. He stated that Mr. Stan Waterhouse will be developing the golf course. He explained that the major site plan will address a number of issues already raised by the Staff. He said that as Mrs. Bowen has stated, they have enhanced the pest management program. He explained that the integrated pest management plan will have to be approved by John Marshall Soil and Water Conservation District, Fauquier County Health Department, as well as other agencies, etc. He stated that they agree with the buffers recommended by staff. He stated that this is not a private country club, and will not host large Presidential Cup type of tournaments. However, there will be some charitable golf tournaments and they are the lifeblood of a golf course during the week. He stated that the customers and usage of the course will determine the numbers of rounds permitted. He discussed that the Zoning Ordinance does not stipulate the required number of parking spaces, but that parking requirements would be addressed at site plan.

Mr. Conrad explained that there are three sources of water available for the golf course. He stated that the Department of Environmental Quality and the Fauquier County Health Department will be required to review this application for approval. He stated that a million gallons of water a day will be used during the growing period, however once the greens are established, usage will be reduced to about a 100,000 to 150,000 gallons per day. He stated that the tree save area will vary depending on the grading, the parking area and buffers.

Mr. Rider asked if it is a proposed public course.

Mr. Conrad stated yes, it is a public course.

Mr. Rider asked Mr. Conrad if the proposed entrance to the golf facility will be a new entrance and he replied yes.

Mr. Rider asked if Virginia Department of Transportation comments have been received and Mr. Margraf stated that they had not. Mr. Margraf further indicated that staff opposed a separate entrance on Route 215 for the golf course.

Mr. Conrad stated that a comprehensive traffic study had been conducted with VDOT, and they were satisfied with those studies.

Mr. Rider asked if anyone wished to speak regarding this request.

Mrs. Helen Ford, resident of Acorn Farm, spoke opposed to this request. She stated that she had previously been opposed to a new four-lane highway, as well as proposed to the new Vint Hill

Entrance. She indicated that they enjoy the walking track at Vint Hill, and oppose the golf course. She stated concerns with the existing protective fencing, and whether it would remain. In terms of golf course, she felt that trees, shrubs, buffers, etc. are needed for safety issues. She also cited concerns with soil contamination, and run off into South Run.

Mr. Chris Miller spoke in opposition to the golf course permit. He stated that he felt that this application should be delayed until the rezoning is approved. He cited concerns with water usage.

Mrs. Bowen stated that she felt during special permit application process, conditions need to be addressed, and not during the site plan phase. She further stated that the exact location needs to be determined.

Mr. Conrad stated that the clubhouse will be moved and they are willing to stipulate that.

Mr. Rider stated that he felt a golf course at Vint Hill is an acceptable use at Vint Hill, but further stated that additional information is still needed by staff for a proper evaluation.

Mr. Lofdahl asked what 30 days would do to their plan.

Mr. Conrad stated that they would have to go before the Planning Commission and the Board of Supervisors and delay their plan by one year, since it will delay their approval.

Mrs. Bowen stated that she did not feel that staff has had ample time to evaluate the request.

Mr. Conrad stated that any delay today, would result in a year delay of opening.

Mr. Barr explained the Board's situation in making a decision without proper information.

Mrs. Mailler stated that in the past, a previous application, there have been continuances of requests for additional time period.

Mr. Lofdahl asked Mr. Burke if there have been any previous special permit approvals with future imposed conditions, and not part of the motion.

Mr. Burke stated that he had never seen a special permit request approved with conditions imposed at a later date, he did not think the Board of Zoning Appeals could do this.

Mr. Rider stated that the concept is acceptable, but he felt additional time is necessary to fairly evaluate the request.

Mr. Conrad asked for staff to determine what additional information is needed within the next seven days.

Mr. Miller asked that the public hearing be left open for public comment.

On the motion made by Mr. Barr and seconded by Mr. Lofdahl, it was moved to defer action for 30 days.

The motion carried unanimously.

Mr. Meadows returned to the BZA.

VARIANCE #44997

CLIFFORD A. SCHMIDT (OWNER/APPLICANT)

Applicant is requesting a variance to a side yard requirement to construct a detached garage, that would be located eight feet from a side property line, wherein the Zoning Ordinance requires fifteen feet. The subject property is identified as PIN #7906-22-3316-000, and contains .97 acre, and is located at 6498 Briggs Road (private) off of Old Alexandria Turnpike (State Route 693), is zoned Village, in Scott District.

Mr. Margraf reviewed the staff report and stated that a site visit was conducted earlier. He stated that the property does have a steep incline. He also stated that Virginia Department of Transportation has no objection to this request.

Mr. Clifford Schmidt was present in support of his request. He explained that the site chosen is considered to be the best site, to minimize impact to the neighbors. He discussed options for relocation of the garage and felt that the proposed site remains the best location, due to the steep incline towards the rear of the property. He explained concerns with the safety to the children if he were required to build retaining walls.

Mr. Rider asked if anyone wished to speak regarding this request.

No one spoke.

On the motion made by Mrs. Mailler, and seconded by Mr. Barr, it was moved to grant variance #44997, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

1. The property was acquired in good faith; and
2. Strict application of the Ordinance would effectively prohibit or unreasonably restrict use of the property because of the narrowness and shape of the lot, location of well, and topographic conditions.
3. The granting of the variance will alleviate a clearly demonstrable hardship approaching confiscating, and is distinguished from a special privilege or convenience sought by the applicant.
4. The hardship or restrictions on the use of the property are by reason of: (*select a, b or c*):
 - (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the Ordinance;

- (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
- (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto;

5. The size or shape, exceptional conditions, or extraordinary situation which result in the hardship or restrictions on the use of the applicant's property are: *(specific findings as to a, b, or c above)*:

6. The variance will be in harmony with the intended spirit and purpose of the Ordinance, and would result in substantial justice being done.

7. The strict application of the Ordinance will produce undue hardship.

8. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity and is not of so general or recurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.

9. The authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

10. The minimum variance that is necessary to afford relief is seven (7') feet to a side property line.

The motion carried unanimously.

VARIANCE #44692

ANTHONY EDWARD BALOGH (OWNER)

The last item of the agenda is the Balogh variance, which was carried over from earlier.

Mr. Rider asked if anyone wished to speak regarding this request. There was no one present to speak, including the applicant.

On the motion made by Mr. Meadows, and seconded by Mrs. Mailler, it was moved to disapprove variance #44692, based on the Board's findings, after due notice and hearing, as provided by §15.2-2204 of the Code of Virginia:

- 1. The property was not acquired in good faith; and
- 2. Strict application of the Ordinance would not effectively prohibit or unreasonably restrict use of the property;
- 3. The granting of the variance will not alleviate a clearly demonstrable hardship approaching confiscation, and is not distinguished from a special privilege or convenience sought by the applicant.
- 4. Any hardship or restriction on the use of the property is not by reason of:

- (a) the exceptional narrowness, shallowness, size or shape of the property at the time of the effective date of the ordinance;
- (b) exceptional topographic conditions or other extraordinary situation or condition of the property;
- (c) exceptional topographic conditions or other extraordinary situation or condition of property immediately adjacent thereto.
- 5. The variance will not be in harmony with the intended spirit and purpose of the Ordinance, and would not result in substantial justice being done.
- 6. The strict application of the Ordinance will not produce undue hardship.
- 7. Such hardship is generally shared by other properties in the same zoning district and the same vicinity, and is of so general and reoccurring a nature as to make reasonably practical the formation of a general regulation to be adopted as an amendment to the Ordinance.
- 8. The authorization of the variance will be of substantial detriment to adjacent property and that the character of the district will be changed by the granting of the variance.
- 9. The Board of Zoning Appeals requested staff to contact Mr. Balogh to determine whether he received notice of the scheduled hearing. If Mr. Balogh verifies he received notice, then the motion stands.

The motion carried unanimously.

OTHER MATTERS

On the motion made by Mr. Lofdahl, it was moved to recess this meeting until January 6th at 1:00 P.M.. Mr. Barr seconded the motion.

The motion carried unanimously.

ADJOURNMENT There being no further business before the Board, the meeting adjourned at 5:00 P.M.

William Rider, Chairman

Barbara Wilson, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A tape recording of the meeting is on file for one year.

C:\bza files\1999 minutes\12-2-99